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OFFICE OF PETITIONS

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CHICAGO IL 60606

In re Application of	:	
Gelvin et al.	:	
Application No. 09/684,387	:	DECISION ON APPLICATION
Filed: October 4, 2000	:	FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 08-880-US7	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed June 29, 2010. Applicant requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from two thousand, two hundred and seventy-six (2,276) days to two thousand, two hundred and twenty-eight (2,228) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two thousand, two hundred and twenty-eight (2,228) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On June 10, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 2,276 days. On June 29, 2010, applicant submitted the instant petition. Applicant maintains that the patent term adjustment indicated on the Determination of Patent Term Adjustment is incorrect and that the patent term adjustment at the time of the mailing of the Notice of Allowance should be 2,228 days.

Applicants' argument has been considered and is well taken. On December 22, 2009, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) after filing a reply to the final Office action on November 4, 2009. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed December 22, 2009, reveals that applicant did not include a statement under 37 CFR 1.704(d).¹ Thus, applicant failed to engage in reasonable efforts to conclude prosecution of the application. Accordingly, the period of adjustment should have been reduced by 48 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, November 5, 2009, and ending on the date that the IDS was filed, December 22, 2009. Accordingly, a period of reduction of 48 days is being entered.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is 2,228 days.

Deposit account 13-2490 will be charged \$200.00 for the fee set forth under 37 CFR 1.18(e).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

¹ Pursuant to 37 CFR § 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Thursday
Date: 7/29/2010

PALM INTRANET

Time: 14:00:17

PTA Calculations for Application: 09/684387			
Application Filing Date:	10/04/2000	PTO Delay (PTO):	2304
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	28
Post-Issue Petitions:	0	Total PTA (days):	2228
PTO Delay Adjustment:	-48		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
127	07/29/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		48	
119	06/10/2010	MAIL NOTICE OF ALLOWANCE			
118	06/08/2010	ISSUE REVISION COMPLETED			
117	06/08/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
116	06/08/2010	DOCUMENT VERIFICATION			
115	05/28/2010	NOTICE OF ALLOWABILITY			
114	05/20/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
113	05/20/2010	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
112	05/25/2010	DATE FORWARDED TO EXAMINER			
111	05/20/2010	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
110	05/20/2010	REQUEST FOR CONTINUED EXAMINATION (RCE)			
109	05/25/2010	DISPOSAL FOR A RCE / CPA / R129			
108	05/20/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
107	05/20/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
106	04/16/2010	MAIL EX PARTE QUAYLE ACTION (PTOL - 326)			
105	04/16/2010	EX PARTE QUAYLE ACTION			
104	04/12/2010	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
103	04/12/2010	REQUEST FOR CONTINUED EXAMINATION (RCE)		1	95
102	04/14/2010	DISPOSAL FOR A RCE / CPA / R129			
101	04/12/2010	INFORMATION DISCLOSURE STATEMENT			

		CONSIDERED			
100	04/12/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
99	04/12/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
98	01/20/2010	PUBS CASE REMAND TO TC			
97	01/25/2010	WORKFLOW - QUERY REQUEST - BEGIN			
96	01/12/2010	EXPORT TO INITIAL DATA CAPTURE			
95	01/11/2010	MAIL NOTICE OF ALLOWANCE			
94	12/22/2009	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
93	01/06/2010	ISSUE REVISION COMPLETED			
92	01/06/2010	DOCUMENT VERIFICATION			
91	01/06/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
90	01/04/2010	NOTICE OF ALLOWABILITY			
89	12/22/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
88	12/22/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
87	12/22/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
86	12/22/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
85	11/11/2009	DATE FORWARDED TO EXAMINER			
84	11/04/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
83	11/11/2009	DATE FORWARDED TO EXAMINER			
82	11/04/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
81	11/11/2009	DISPOSAL FOR A RCE / CPA / R129			
80	11/04/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
79	08/04/2009	MAIL FINAL REJECTION (PTOL - 326)			
78	07/29/2009	FINAL REJECTION			
77	07/01/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
76	07/01/2009	REFERENCE CAPTURE ON IDS			
75	07/01/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	73
74	07/08/2009	DATE FORWARDED TO EXAMINER			
73	07/01/2009	RESPONSE AFTER NON-FINAL ACTION			

72	07/01/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	04/01/2009	MAIL NON-FINAL REJECTION			
70	03/30/2009	NON-FINAL REJECTION			
69	02/28/2009	DATE FORWARDED TO EXAMINER			
68	02/24/2009	RESPONSE TO ELECTION / RESTRICTION FILED			
67	02/24/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
66	02/05/2009	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
65	02/04/2009	CORRESPONDENCE ADDRESS CHANGE			
64	01/23/2009	MAIL RESTRICTION REQUIREMENT			
63	01/21/2009	REQUIREMENT FOR RESTRICTION / ELECTION			
62	12/04/2008	DATE FORWARDED TO EXAMINER			
61	12/03/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
60	12/04/2008	DATE FORWARDED TO EXAMINER			
59	12/03/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
58	12/04/2008	DISPOSAL FOR A RCE / CPA / R129			
57	12/03/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
56	10/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
55	09/03/2008	MAIL FINAL REJECTION (PTOL - 326)			
54	09/02/2008	FINAL REJECTION			
53	07/23/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	07/23/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	50
51	08/19/2008	DATE FORWARDED TO EXAMINER			
50	07/23/2008	RESPONSE AFTER NON-FINAL ACTION		27	47
49	07/23/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
48	07/23/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
47	03/26/2008	MAIL NON-FINAL REJECTION	2304		-1
46	03/22/2008	NON-FINAL REJECTION			
39	03/18/2008	CASE DOCKETED TO EXAMINER IN GAU			
38	10/17/2007	WITHDRAW FLAGGED FOR 5/25			
37	10/16/2007	FLAGGED FOR 5/25			

35	06/21/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	03/11/2007	TRANSFER INQUIRY TO GAU			
33	10/26/2006	CORRESPONDENCE ADDRESS CHANGE			
32	10/26/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
31	09/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
30	06/09/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
29	01/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
28	01/10/2006	CASE DOCKETED TO EXAMINER IN GAU			
27	09/30/2005	CORRESPONDENCE ADDRESS CHANGE			
26	09/30/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
25.7	01/09/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	01/09/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24.7	12/10/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	12/10/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	04/02/2001	REFERENCE CAPTURE ON IDS			
22.7	04/02/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	04/02/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	01/09/2003	REFERENCE CAPTURE ON IDS			
19	11/30/2001	REFERENCE CAPTURE ON IDS			
18.7	11/30/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	11/30/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	07/03/2002	REFERENCE CAPTURE ON IDS			
16.7	07/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	07/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	12/10/2003	REFERENCE CAPTURE ON IDS			
13	06/14/2004	FILE MARKED FOUND			
12	01/27/2004	FILE MARKED LOST			

11	03/19/2003	TRANSFER INQUIRY TO GAU			
10	03/19/2003	TRANSFER INQUIRY TO GAU			
9	03/19/2003	TRANSFER INQUIRY TO GAU			
8	03/18/2003	TRANSFER INQUIRY TO GAU			
7	07/17/2002	TRANSFER INQUIRY TO GAU			
6	02/13/2001	APPLICATION DISPATCHED FROM OIPE			
5	02/13/2001	APPLICATION IS NOW COMPLETE			
4	12/08/2000	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
3	12/08/2000	CORRESPONDENCE ADDRESS CHANGE			
2	11/14/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/04/2000	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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